



***Comptroller of the
State of New York***



***Treasurer of the
State of California***



***Treasurer of the
State of North Carolina***

May 27, 2004

Mr. William Donaldson
Chairman
U.S. Securities and Exchange Commission
450 5th Street, N.W.
Washington, DC 20549

Dear Chairman Donaldson:

When you accepted the chairmanship of the U.S. Securities and Exchange Commission, you did so, you recently observed, because "a real opportunity was being presented to make a difference at a crucial time."

You are right; this is a watershed moment. The nation's effort to reverse what you have rightly called "a general erosion of standards of integrity and ethics in the corporate and financial world" is now under heavy counterattack. In particular, the opponents of honest, open and transparent markets and shareholder rights have mounted a fierce lobbying campaign to defeat the SEC's proposal to provide shareholders of corporations with the fundamental right to participate in elections for boards of directors. As trustees of 12 public pension funds, which represent \$703 billion in assets, we are deeply concerned by this massive lobbying effort and what is at stake for all shareholders. We are writing you again to urge you to stand firm and take swift and decisive action at the SEC to grant shareholders the fundamental right to nominate and elect corporate directors.

This is a defining point in the movement to restore the investor trust and confidence in the financial markets that are so critical to the nation's continued economic growth. Much progress has been made. But this intense lobbying effort threatens to derail the movement for reform short of its destination. To that end, your decision on the important matter of proxy access will determine whether investors' legitimate concerns will be ignored or whether investors will be able to ask the hard questions that might have prevented an Enron or a WorldCom collapse, and that in the future can protect the investments of millions of shareholders.

We strongly believe that the shareholders of companies – those who invest and put their savings at risk – must be able to hold corporate directors accountable. Voting rights for shareholders to nominate directors are fundamental. Yet today, shareholders have scant opportunity to address their concerns about inadequate representation on the boards of the companies in which they invest. And so, action to expand those voting rights could not be timelier. The corporate scandals of the last few years have uncovered, among other things, a widespread failure by boards of directors to provide effective oversight of the corporate managers who nominate those directors. The current avenues available to shareholders to nominate directors are long, clogged with obstacles, and prohibitively expensive.

The SEC has debated for decades, and for much of the past year in its consideration of a proposed rule on director nominations, how to hold companies and their corporate directors accountable. The time for continued debate is over; the time for decisive action is now. What is needed at this critical juncture is a rule that will give shareholders a genuine right to nominate directors to the boards of companies they own. As you have put it, "Today, nominees and directors emerge from a system that really excludes meaningful input from shareholders."

The SEC's proposed change in shareholder access to the proxy ballot only begins to address the basic principle of giving shareholders reasonable voting rights and an opportunity to nominate directors. We would prefer a rule without the sort of unnecessarily restrictive triggering requirements that even the largest investors would have difficulty satisfying, and which would make it difficult to effect change in a timely manner. Consider that under the Commission's current proposal, Enron or WorldCom shareholders would not have been able in the year following the collapse of those companies to remove company directors. We believe that a qualifying shareholder or group should have access to the proxy without waiting two years to bring their nominees to a vote.

But while we would prefer a stronger rule, it is essential the Commission now approve a rule at least as strong as the one originally proposed. Approving anything less would be seen, by investors and corporations alike, as a retreat from the principles of openness, honesty and transparency that have driven the corporate governance reform effort in the wake of the recent scandals—scandals that rocked the financial markets, damaged our economy, and harmed millions of American families.

We are not alone in urging you to stay the course. Thousands of investors have sent their comments to the Commission in an outpouring of support for shareholders' right to elect corporate directors. In their comments, you will hear the voices of people who understand the fundamental issues at stake. They need you to stand with them.

These commenters see a system in which shareholders are increasingly speaking their discontent with boards of directors, to no avail. In a sampling for the 2003 proxy season of 350 companies chosen from the S&P 500, the S&P 400 MidCap, and the S&P 600 SmallCap, shareholders cast "withhold votes" exceeding 20 percent at approximately 82 companies. In addition, shareholders cast "withhold votes" exceeding 35 percent at 11 companies, including: Federated Department Stores (48.66 percent), Starwood Hotels & Resorts (43.51 percent), Health Net, Inc. (40.71 percent), Abercrombie & Fitch Co. (38.88 percent), and Ryder Systems Inc. (37.29 percent). It is anticipated that 2004 will see a larger share of withhold votes than in 2003. Recently, for example, more than 45 percent of the Walt Disney Co.'s shareholders withheld their votes for the chairman and CEO because of their dissatisfaction with his performance. As you know, these percentages understate shareholder discontent, since brokers have been allowed to vote shareholder proxies for management if, in many circumstances, the shareholder has provided no instruction.

Yet under the current system, those votes are merely symbolic. As Abraham Keller, who identified himself only as "stockholder," asked in his comment to the Commission, "Why is it that the people who put up the money for these businesses have absolutely no say about who gets to run them?"

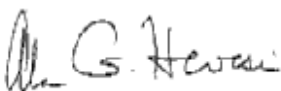
Those who commented see through the bogus fears about expanded shareholder rights being peddled by chief executives and corporate directors fighting to retain the status quo. "We would urge the Commission to focus its attention on experiences in other jurisdictions where provisions granting shareholders direct access to the nomination process have not resulted in the destabilisation of corporate boards," wrote a group of large institutional investors from abroad, who pointed out that the proposals before the Commission fall short of the standard of shareholder voting rights in many other parts of the world. Or as *The Economist* bluntly put it in a recent editorial, "When it comes to

shareholder democracy America has barely moved beyond the corporate equivalent of the rotten borough."

And the commenters see the pressure being put on you and the Commission by the Business Roundtable, the U.S. Chamber of Commerce and, according to press reports, high officials in the Bush administration. "I know how hard some corporations have lobbied the SEC to limit this rule, and the ability of investors to access it," wrote Tracey Coker Rembert of College Park, Md. "I sincerely hope that the SEC will stand by investors, large and small, that have poured their life savings into the markets. I'm tired of opening the pages of *The Wall Street Journal* every day and seeing more new evidence that the corporate corruption we've all witnessed is systemic in nature. We need to have greater checks and balances on company executives, and the Boards that kowtow to them, in order to turn this economy around. You'll never regain investor confidence until you've fixed the reason it was lost."

We, too, urge you to stand by shareholders, large and small, by approving stronger shareholder voting rules and making a difference for the openness and honesty of our markets and the strength of our free enterprise system.

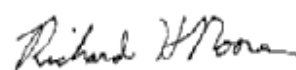
Sincerely,



Alan G. Hevesi
Comptroller
State of New York



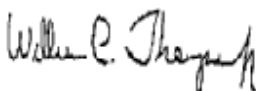
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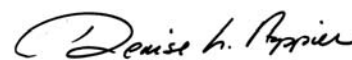
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State of Maine



Orin S. Kramer
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New Jersey State Investment
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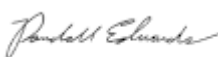
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